

## **501 KAR 1:030. Determining parole eligibility.**

RELATES TO: KRS 49.480, 119.025, 197.410(2), 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).

(2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(4) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or

(b) Answer the detainer.

(5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(7) "Parole for violent offender" is defined in KRS 439.3401.

(8) "Physical injury" is defined in KRS 500.080(13).

(9) "Serious physical injury" is defined in KRS 500.080(15).

(10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his postincarceration supervision by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his

or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a

capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;
2. Committed on or after July 15, 2002, which is:
  - a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;
  - b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
  - c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
  - d. Robbery in the first degree;
3. Committed on or after July 12, 2006, which is:
  - a. A capital offense;
  - b. Class A felony;
  - c. Complicity to a Class A felony;
  - d. Class B felony involving the death of the victim or serious physical injury to a victim;
  - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
  - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);
  - g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);
  - h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
  - i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
  - j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
  - k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
  - l. Robbery in the first degree; or
4. Committed on or after June 26, 2007, which is:
  - a. A capital offense;
  - b. Class A felony;
  - c. Complicity to a Class A felony;
  - d. Class B felony involving the death of the victim or serious physical injury to a victim;
  - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
  - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) Subsequent parole review. Except as provided in KRS 439.340(14):

(a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and

(b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;
2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;
3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and
4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority. If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

- (1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;
- (2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and
- (3) All other release requirements, including victim notification and re-entry planning, are completed.

The Chairperson of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by her signature below. (15 Ky.R. 1186; Am. 1467; eff. 12-2-1988; 2424; eff. 7-26-1989; 21 Ky.R. 2165; 2671; eff. 5-4-1995; 24 Ky.R. 2143; 25 Ky.R. 69; eff. 7-13-1998; 607; 1352; eff. 12-17-1998; 27 Ky.R. 3347; 28 Ky.R. 615; eff. 9-10-2001; 36 Ky.R. 910; 1201; eff. 1-4-2010; 37 Ky.R. 1541; 2160; eff. 4-1-2011; 38 Ky.R. 824; 1127; eff. 1-6-2012; 43 Ky.R. 2209; 44 Ky.R. 218; eff. 9-1-2017.)